

JUNE 22, 2011  
 PROPOSED ADDITIONAL REVISIONS TO PENALTY PROCESS  
 HANDOUT #2  
 (for discussion purposes only)

(Note: The single underline and strikeout represent the 45-day comment period revisions.  
 The double underline and strikeout represent the proposed revised language.)

**§Section 17949. Violations and Penalties.**

(~~ed~~) ~~What are the penalties for not complying with program requirements?~~  
 Penalties for specified violations of program requirements are as follows.

Violation	Description of Violation	Penalty
(1) CCR Section 17944; PRC Section 42310	Product manufacturer did not comply with <u>rigid plastic packaging</u> container requirements <u>in accordance with Sections 17945.3 and 17945.5 of this Article.</u> Penalty determined by degree of noncompliance.	\$5,000—\$50,000 See Subsection ( <del>ee</del> ).
(2) CCR Section <del>17946</del> <u>17945.2</u>	Product manufacturer did not submit certification by due date.	\$1,000—\$50,000 See Subsection ( <del>ef</del> ).
(3) CCR Section <del>17946</del> <u>17945.2;</u> <u>17945.3</u>	Product manufacturer did not submit complete or accurate certification by due date. Degree of incompleteness or inaccuracies include, but are not limited to, misreporting exemptions; failure to account for all products; failure to account for subsidiaries and divisions; lack of container manufacturer's verification of number of containers sold or weight of containers; inconsistencies in information <del>from</del> <u>between</u> product manufacturer and container manufacturer; lack of signatures; mathematical inaccuracies.	\$1,000—\$50,000 <u>See Subsection (g)</u>
(4) CCR Section <del>17946</del> <u>17945.2;</u> <u>17945.3;</u> <u>17945.4;</u> PRC Section 42321	Product manufacturer <u>or container manufacturer</u> submitted false or misleading information on certification.	Referral to Attorney General for prosecution for fraud within 30 days of discovery by <u>the Department Board</u> ; maximum fine, \$100,000.

(~~ef~~) ~~For violation (2), what criteria will be used to determine penalties for certifications submitted late?~~ Certifications submitted late ~~will~~ shall be assessed the following penalties:

Days Late	Amount of Penalty
1 - 30	\$1,000
31 - 60	\$5,000
More than 60	Up to \$50,000 (Considered nonresponsive)

(g) Certifications submitted incomplete or with inaccuracies shall be assessed penalties based on the significance and degree of the incompleteness and inaccuracies, as follows:

<u>Significance of Incompleteness and/or Inaccuracy</u>	<u>Degree of Incompleteness and/or Inaccuracy</u>	
	<u>MAJOR</u>	<u>MINOR</u>
<u>MAJOR</u>	<u>\$50,000</u>	<u>\$34,999</u>
	<u>TO</u>	<u>TO</u>
	<u>\$35,000</u>	<u>\$25,000</u>
	<u>\$24,999</u>	<u>\$14,999</u>
<u>MODERATE</u>	<u>TO</u>	<u>TO</u>
	<u>\$15,000</u>	<u>\$10,000</u>
	<u>\$9,999</u>	<u>\$4,999</u>
<u>MINOR</u>	<u>TO</u>	<u>TO</u>
	<u>\$5,000</u>	<u>\$1,000</u>

- (1) The level of a compliance certification's incompleteness or inaccuracy shall be determined by the Department as follows:
- A. The degree will be "minor" or "major" depending on the amount of information missing or inaccurately stated as compared to the required content per Section 17945.3 and calculations per Section 17945.5; and
  - B. The significance will be "minor," "moderate," or major" depending on the extent to which it affects the Department's ability to determine the product manufacturer's compliance.
  - C. For example, if the Department cannot replicate the compliance calculations from the information provided, that would likely be of "major" significance and degree. If compliance with most but not all of the product manufacturer's containers are included, that would likely be of "moderate" significance and "major" degree. If the Department cannot determine the appropriateness of exemption claims or new product waivers, which would likely be at least of "moderate" significance but "minor" degree. Missing or inaccurate company information would likely be of "minor" significance and "minor" degree.